

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23/11/2004

CORAM

THE HONOURABLE MR. JUSTICE N.V.BALASUBRAMANIAN
AND
THE HONOURABLE MRS. JUSTICE R. BANUMATHI

A.S.No.289 of 1990

1. Kalaimani
2. Thangaraju Appellants / Defendants

-Vs-

Chinnapaiyan alias
Perumal Gounder Respondent / Plaintiff

This Appeal has been filed under Section 96 C.P.C against the Judgment and Decree dated 10.04.1989 of the Subordinate Judge, Vriddhachalam in O.S.No.5 of 1987, as stated therein.

!For Appellants :: Mr. D.J.Venkatesh for
M/s. V. Raghavachari

^For Respondent :: Mr. R. Aravind for
Mr. Perumpulavil Radhakrishnan

:J U D G M E N T

R. BANUMATHI, J.

This Appeal is at the instance of the unsuccessful Defendants in O. S.No.5 of 1987 on the file of Sub-Court, Vridhachalam. Aggrieved over the Judgment and Decree of the Money Suit dated 10.04.1989, the Defendants have preferred this Appeal.

2. For convenience, parties would be referred to as they were arrayed in O.S.No.5 of 1987 on the file of Sub-Court, Vridhachalam.

3. The Plaintiff filed the Suit on Promissory Note. The Defendants are Father and Son. Case of the Plaintiff is that the Defendants have borrowed a sum of Rs.25,000/- and executed the Suit Promissory Note on 11/09/1984 at Manmalai Village, agreeing to repay the same with interest at the rate of 12% per annum. In spite of repeated demands, issuance of Legal Notice dated 07.04.1986, the Defendants have not repaid the amount. The Defendants have only sent the Reply dated 17.04 .1986, containing false

allegations to defraud the claim of the Plaintiff. Hence, the Suit.

4. Denying the execution of the Promissory Note, the Defendants have filed the Written Statement alleging that the Defendants have sold their lands to one Muruga Gounder. The Plaintiff has asked the Defendants to sell their lands to him. When the Defendants have refused to convey the property to the Plaintiff, aggrieved over the same, the Plaintiff has filed the Suit creating a false Promissory Note and that the Defendants are not liable to pay any amount.

5. On the above pleadings, the Trial Court has framed three issues. The Plaintiff has examined himself as P.W.1. Attestor was examined as P.W.2. Exs.A.1 to A.4 were marked. On behalf of the Defendants, First Defendant was examined as D.W.1. Ex.D.1 was marked. On the evidence of P.Ws.1 and 2 and Ex.A.1 and the evidence adduced, learned Trial Judge found that the Plaintiff has proved the execution of the Promissory Note and advancing money of Rs.25,000/-. While appreciating the evidence, learned Trial Judge inter alia compared signature of the First Defendant in Ex.A.1 with his signatures in the Deposition and signature of the Second Defendant in the Vakalat and found that the signatures tallied. Rejecting the defence of denial of execution, the Trial Court decreed the suit.

6. Aggrieved over the Judgment and Decree of the Trial Court, the Defendants have preferred this Appeal. Assailing the findings of the Trial Court, learned counsel for the Appellants submitted that the Trial Court erred in believing the evidence of P.W.2, who is the Brother's son of the Plaintiff and his interested testimony. The conclusion of the Trial Court is also assailed on the ground that the Trial Court has erred in suo motu comparing the signatures of the Defendants. It is the further contention that such comparison of the disputed signatures ought to have been made only with the contemporaneous admitted signatures and not with the signatures in the Court.

7. Submitting that the Plaintiff has convincingly proved the execution of the Promissory Note by adducing evidence, learned counsel for the Respondent / Plaintiff has submitted that under Section 73 of the Indian Evidence Act, Court has got ample powers to compare the disputed signature with the signatures in the papers available in the Court. In support of his contention, learned counsel has relied upon the decision reported in D. PANDI ..VS.. DHANALAKSHMI BANK LTD., (A.I.R. 2 001 MADRAS 243). Reiterating the findings of the Trial Court, learned counsel has submitted that there is no reason warranting interference.

8. We have carefully considered the submissions of both sides, Judgment and Decree of the Trial Court and the materials on record. In such consideration, the following points arise for our consideration:-

- i. Whether the approach of the Trial Court in comparing the signature of the Defendants in Ex.A.1 with other signatures in the Court is erroneous ? - and -
- ii. Whether the Judgment and Decree of the Trial Court suffers from any infirmity warranting interference?

9. Defence is one of total denial of execution of Promissory Note.

Case of Plaintiff is that the Defendants have approached the Plaintiff for borrowal of amount of Rs.25,000/- to meet the expenses towards digging well and for the purpose of purchase of Motor Pumps. Defendants have denied the execution. According to the Defendants, the Plaintiff has sought to purchase the lands from the Defendants, which the Defendants declined; aggrieved over the same, the Plaintiff filed the vexatious Suit by creating a false Promissory Note. We may firstly point out that only the First Defendant has examined himself as D.W.1 denying his signature in Ex.A.1 D-2-Son of the First Defendant signed in Ex.A.1 has not got into the Witness box to deny his signature in Ex.A.1.

10. In the light of the above, we have carefully considered the evidence adduced by the Plaintiff to prove the execution of Promissory Note. The Plaintiff / P.W.1 has clearly deposed that the Defendants have borrowed Rs.25,000/- on 11.09.1984 for meeting the expenses towards digging well, for the purpose of purchase of oil pump sets and for purchase of cycles for keeping in their Cycle Shop. The Plaintiff has clearly stated about the execution of Ex.A.1 written by one Ramadoss and that both the Defendants have signed on the Revenue Stamp and also down below the Stamp. Evidence of P.W.1 goes along with the evidence of P.W.2-Attestor.

11. P.W.2-Rajendran is the Brother's Son of the Plaintiff. P.W.2 is also resident of Manmalai and that the Plaintiff and the Defendants are his neighbours. P.W.2 has stated that the First Defendant informed him about the intention to borrow money from the Plaintiff. P.W.2 being Brother's Son of Plaintiff quite probably he would have been called to be the attesting witness. P.W.2 has clearly stated that the Defendants have stated to him that they have taken loan of Rs.25,000/- from the Plaintiff. P.W.2 has attested in the same and that one Beeman has also attested in Ex.A.1 and that the same was

written by one Ramadoss. Evidence of P.W.2 substantially corroborates the evidence of P.W.1 on the borrowal of Rs.25,000/- and the execution of the Promissory Note.

12. Evidence of P.W.2 is assailed on the ground that he is related to the Plaintiff and that the Trial Court erred in accepting his evidence as corroborative piece of evidence to prove the execution of Ex. A.1. There is no Rule of Law that the evidence of a related witness would be a tainted one. Rule of Prudence requires such evidence is to be analysed cautiously. As we pointed out earlier, P.W.2 being the neighbour and Brother's Son of Plaintiff quite probably he would have been called upon to be the attesting witness.

13. In Chief-examination, P.W.2 has stated, "...vGjpf; bfhLf;Fk; nghJ bfh";r neuk; ,Ue;njd;/ mjd; gpwF ehd; btspna ngha;tpl;nld;/ gzk; vz;zpf; bfhz;L ,Ue;jhh;fs;..." P.W.2 has reiterated the same in his Cross-examination saying "...g[nuh nehl;il vGjpf; bfhz;oUf;Fk;ngnhj ehd; btspna te;J tpl;nld;..." Drawing the attention of the Court to this part of evidence of P.W.2, credibility of P.W.2 is sought to be assailed that the evidence of P.W.2 cannot be the corroborative evidence to prove the execution of EX.A.1. It is further contended that P.W.2 having not seen the Defendants signing in Ex.A.1 and the document being read over to the Defendants, P.W.2 cannot be the

competent witness to prove the execution of Ex.A.1. This contention does not merit acceptance. In his evidence, P.W.2 has clearly stated that he remained there for some time and later, the Defendants informed him about their borrowal of Rs.25,000/- from the Plaintiff. His version that in the midst of writing of Promissory Note, he went out does not nullify the effect of his evidence in corroborating the evidence of P.W.1 in advancing loan.

14. Evidence of P.Ws.1 and 2 brings home the execution of Ex.A.1 and the signing of the Defendants thereon. In addition to the evidence of P.Ws.1 and 2, learned Trial Judge has compared the signature of First Defendant in Ex.A.1 with his signatures in the deposition; Likewise signature of Second Defendant in Ex.A.1 was compared with his signature in the Vakalat. On such comparison, learned Trial Judge formed an opinion that the signatures of the Defendants in Ex.A.1 is similar and on that ground rejected the defence version of forgery.

15. The approach of the Trial Court is very much assailed contending that the Trial Court suo motu ought not to have compared the signatures of the Defendants and such suo motu comparison is erroneous. In this regard, reliance is placed upon the decision of the learned Single Judge reported in SOMASUNDARAM ..VS.. PALANI (2000 (I) L.W. 511) wherein learned Single Judge has observed, "...Even though the Court may have the power to compare the signatures, there must be some admitted signature of the defendant, on the basis of which a comparison will have to be made..." In the case before the learned Single Judge, the facts were entirely different. The Suit on the Promissory Note was dismissed on such comparison of signature of the Defendant with Vakalat and Written Statement. On those factual findings, learned Single Judge has observed that even though the Court may have the power to compare the signatures, the comparison should not have been made on the basis of the signatures affixed by the Defendant in the Vakalat and the Written Statement after the dispute arose. The case in hand stands entirely on a different footing where the finding of the Trial Court on such comparison is only an additional piece of evidence, corroborating the testimony of P.Ws.1 and 2.

16. In addition to the modes of proving the handwriting as provided by Sections 45 and 47 of the Indian Evidence Act, Section 73 of the Act provides another mode by direct comparison of the disputed signatures or written or finger impression with one, which is admittedly genuine or proved to be so. Section 73 of the Indian Evidence Act enables the Court using its own eyes to compare the disputed signatures with the admitted signatures. It happens not infrequently that in spite of evidence rendered, the Court cannot help comparing handwriting or signature with their own eyes for the proper assessment of the value of the total evidence.

17. In the light of defence plea of denial of execution raised by the Defendants, learned Trial Judge was right in comparing the signatures of the Defendants in Ex.A.1 with that of the signatures of First Defendant in the deposition and the signature of the Second Defendant in the Vakalat. We are also to point out that the findings of the Trial Court are not only based on

such comparison, but also on the positive evidence of P.Ws. 1 and 2.

18. As noted above, the signature of the First Defendant in Ex.A.1 was compared with his signatures in the deposition; signature of the Second Defendant was compared with that of his signature in the Vakalat. On behalf of the Appellants / Defendants, it is mainly contended that the Trial Court erred in comparing the disputed signatures in Ex.A.1 with the signatures available in the post suit stage. It is further contended that the signatures of the Defendants in the deposition, Vakalat and the Written Statement cannot be recorded as the reliable standard for comparison. Further contention is that such comparison ought to have been made with any contemporaneous admitted signatures of the Defendants. We are of the view that this contention does not merit acceptance. Signature of the First Defendant in the deposition though affixed in the Court was signed unconstrainedly in a natural manner. The signatures of the First Defendant in the deposition are voluntary and free handwriting without any instinct for change of characteristics. Likewise, Vakalat contains natural and spontaneous signatures which afford reliable standard to the Court for comparison. In our view, there is no impediment for comparing the signatures in Ex.A.1 with that of the signature in the Vakalat, Written Statement and Deposition made in the Post Litam stage.

19. In view of the strong objection raised, we have also made comparison to appreciate the opinion formed by the learned Trial Judge. We have compared the signatures of the First Defendant in Ex.A.1 with the signatures in the deposition, Ex.D.1-Mortgage Deed and Ex.A.3-Acknowledgement. We find that the general characteristics of the writing are similar. There is peculiar writing of "ly" and the gap between "f" and "ly". On such comparison, we find that the signatures of the First Defendant in Ex.A.1 is similar to that of his signatures in Ex.D.1, Ex.A.3 and his signatures in the deposition. Likewise, the signature of the Second Defendant also found to be tallying. It is relevant to note that the Second Defendant has not got into the Witness box to deny his signature in Ex.A.1. Learned Trial Judge has rightly rejected the plea of denial of execution of the Promissory Note. We have no reason to take a different view.

20. Learned counsel for the Respondent / Plaintiff has drawn our attention to the Judgment of the Division Bench of this Court reported in D. PANDI .VS.. DHANALAKSHMI BANK LTD., (A.I.R. 2001 MADRAS 243). In reference to the various decisions, this Court has observed,

"...it is true that in order to find out the genuineness of the signature, it is but proper for the Court to get the opinion of the expert. However, we are of the view that Section 73 enables the Court to compare the disputed signature with the other admitted or proved signatures..."

After considering Section 73 of the Act in the decision reported in AJIT SAVANT MAJAGAVI .VS.. STATE OF KARNATAKA (A.I.R. 1997 S.C. 3255), the Supreme Court has held as follows:-

"...As a matter of extreme caution and judicial sobriety, the Court should not normally take upon itself the responsibility of comparing the disputed signature with that of the admitted signature or handwriting and in the event of slightest doubt, leave the matter to the wisdom of experts. But

this does not mean that the Court has not the power to compare the disputed signature with the admitted signature as this power is clearly available under Section 73 of the Act..."

Thus, it is clear that normally the Court should not take up on itself the responsibility of comparing the disputed signatures with that of the admitted signature. Undoubtedly, the Court is competent to compare the disputed signature with the admitted signature in view of Section 73 of the Indian Evidence Act. As we said earlier, it happens not infrequently that in spite

of evidence rendered, the Court cannot help comparing the handwriting or signatures with its own eyes for proper assessment of the total evidence and to arrive at the correct conclusion.

21. Yet another defence advanced by the Defendants is that the Plaintiff has approached the Defendants to purchase the lands and the Defendants have refused the same and that the Defendants have sold their lands to one Muruga Gounder. Further defence is that the Plaintiff has been asking the Defendants to sell their property and that the differences have arose between them and only in 1985, the Defendants have approached the Plaintiff for a loan of Rs.15,000/-. When the Plaintiff has agreed to part with the loan amount, the Defendants were ready to take the loan amount, for which Ex.D.1 written in a Stamped Papers on 12.08.1985 signed by the Defendants. Ex.D.1, which is subsequent to Ex.A.1 has no relevancy to the earlier document □ Suit Promissory Note. Further, the subsequent document written and produced from the custody of the Defendants hardly have any relevance; nor does it advance the case of the Defendants in the denial of execution. The defence version that due to differences in the sale of land the Plaintiff has falsely created Ex.A.1-Promissory Note does not impress us. Learned Subordinate Judge, on the evidence of P.Ws.1 and 2 and on comparison of the signatures of the Defendants in Ex.A.1, rightly found that the suit claim is proved. The findings and the reasonings of the Trial Court are well in conformity with the evidence adduced and we confirm the findings of the Trial Court. This Appeal is bereft of merits and is bound to fail.

22. A.S.No.289 of 1990:-

Therefore, the Judgment and Decree dated 10.04.1989 of the Subordinate Judge, Vriddhachalam in O.S.No.5 of 1987 are confirmed and this Appeal is dismissed with the costs of the Respondent / Plaintiff.

Index: Yes

Internet: Yes

Dpn/-

To:

1. The Subordinate Judge,
Viruddhachalam,
Cuddalore District.

2. The Record Keeper,
V.R.Section,
High Court, Madras.

□